

## **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456
THIS DOCUMENT RELATES TO:  ALL CLASS ACTIONS RELATING TO THE TRACK TWO DEFENDANTS	CIVIL ACTION: 01-CV-12257-PBS  Judge Patti B. Saris

**CLASS PLAINTIFFS' REPORT TO THE COURT REGARDING NOTICE IN  
THE TRACK TWO SETTLEMENT AND MOTION TO RESET  
CERTAIN DATES RELATED TO CONSUMER CLAIMS**

In July 2008 this Court entered its Order Granting Preliminary Approval of the Track Two Class Settlement, Directing Notice to the Classes, and Scheduling Fairness Hearing ("Preliminary Approval Order") [Docket No. 5426]. The Preliminary Approval Order directed Plaintiffs to give notice to the Class as prescribed by the Track Two Settlement Agreement and also set certain dates for the filing of claims, requests for exclusion and objections to the Settlement. It also set a date for a final approval hearing on December 16, 2008.

While the process of providing notice to the TPP class members is complete and publication notice directed to members of Class 3 has taken place in accordance with the Court approved Notice Plan, Plaintiffs are still in the process of obtaining all the necessary data to provide direct mail notice to consumer members of Classes 1 and 3. As a result Plaintiffs hereby respectfully move the Court for an order resetting certain dates related to the consumer class members in the Track Two Settlement as well as the date for a continued Final Fairness hearing with respect to consumers.

**A. Notice to the Classes to Date**

**1. Third Party Payors**

As provided for in the Court approved Notice Plan [Docket No. 5133, Exhibit G], the process of providing notice to the class members commenced August 1, 2008. Direct mail notice to TPP class members was sent on August 1, 2008 and August 8, 2008. Additionally, publication notice to TPP class members commenced on August 1, 2008 and was completed on September 8, 2008. In total 41,468 notices were mailed to individual TPP class members. The date set in the Preliminary Approval Order for the filing of claims and notices of exclusion by TPP class members is December 1, 2008. To date the Court appointed claims administrator, Complete Claims Solutions, Inc. (“CCS”), has received a total of 76 claims and 7 requests for exclusion from TPP class members. .

Because notice to TPPs is complete and all TPPs have had ample time to respond to the notice and file a claim, no extension of the relevant dates for the filing of claims or exclusions is requested as it relates to TPP class members. Accordingly, all matters relating to the TPPs, including any TPP objections that may be filed, can be resolved at the hearing previously set for 2 pm. on December 16, 2008 and the parties wish to proceed to reach closure on all TPP issues on that date.<sup>1</sup>

**2. Consumers**

The Court will recall that the Notice Plan called for direct mail notice to Class 1 (Medicare Part B) consumers utilizing data obtained from the Centers for Medicare and Medicaid Services (“CMS”). With respect to Class 3 (Private Insurance) consumers the Notice Plan called for a combination of direct mail notice utilizing data obtained from members of the

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<sup>1</sup> Plaintiffs have conferred with counsel for the Track 2 Defendants and all Defendants agree that the Court should maintain the December 16 hearing to resolve all issues with respect to TPPs.

Independent Settling Health Plans (“ISHPs”) as well as a national publication plan directed at Class 3 consumers.

As called for in the Notice Plan, publication notice directed at Class 3 consumers commenced on August 5, 2008 and was completed on September 8, 2008. This also included internet banner ads which ran from August 15, 2008 to September 30, 2008 and 30 second cable television ads which ran from September 2, 2008 to September 9, 2008. To date, CCS has received a total of 1,925 claims from Class 3 consumers. A total of over 45,000 Class 3 Notice Claim forms have been downloaded from the settlement website. As the date set for the filing of claims in the notice sent to Class 3 members was January 31, 2009, this number is expected to increase.

At the time of preliminary approval, Plaintiffs, along with CCS, provided the Court with their best estimates as to when direct mail notice to consumers in Classes 1 and 3 could be reasonably accomplished. The dates set forth in the proposed Preliminary Approval Order provided to the Court were based on these estimates. The estimates were based on prior experience obtaining data from CMS in the GSK AWP Settlement as well as experience working with that data in the AstraZeneca Class 1 Settlement. Because of the complexity of the Track Two Settlement in relation to these previous settlements, those estimates were inaccurate.

Plaintiffs are still in the process of working with CMS to obtain the correct data related to Class 1 members. The delay in receiving the data occurred because this request for data contained more information, and more data fields, than were previously requested. As the Court may recall, Class 1 notice in this settlement will provide each consumer identified in CMS’ database with the total amount of their claim without need for additional documentation from the consumer. In order to do this accurately, CCS needed to work though with CMS the relevant

fields of data from among the 100's of fields available in CMS's database and to ensure that CCS understood the information contained in each field. Additionally there was delay in ensuring that the data request to CMS included all relevant and accurate National Drug Codes.

As for data related to Class 3 consumers, there was also a delay in obtaining data from ISHP members. That delay was the subject of a motion for extension of the date by which data needed to be provided [Docket No.5506] which was granted by the Court. That data has now been received and it is being reviewed by CCS. Preliminary indications are that the data may not be complete. Plaintiffs are attempting to clarify these issues with ISHP counsel. This should be complete within the next two weeks. As a result of these delays, no direct mail notice has yet gone to consumers in Classes 1 or 3.

**B. Request to Reset Certain Dates Related to Consumer Claims, Requests for Exclusion**

Plaintiffs herby respectfully move for a modification of certain dates set forth in the Court's Preliminary Approval Order in order to give Plaintiffs sufficient time to accomplish direct mail notice to Class 1 and 3 consumers. Plaintiffs will be prepared to proceed on all matters with respect to TPPs (Classes 2 and 3) on December 16, 2008. Plaintiffs have provided a Proposed Order setting forth the new proposed dates related to consumers for the Court's consideration. In addition, the new dates are set forth in the chart below. Plaintiffs believe these dates will provide sufficient time for Plaintiffs and CCS to receive and work with the data from CMS, clarify any issues related to the ISHP data and to finalize direct mail notice to all consumers prior to the final Fairness Hearing.

Accordingly, Plaintiffs respectfully move that the Court enter the attached Proposed Order altering the dates set forth in the Preliminary Approval Order as they relate to consumer class members only. In addition, Plaintiffs will provide notice on the website associated with the

Track Two Settlement of these new dates, including a copy of the Court's Order setting new dates, and inform all consumers of the new dates in all future communications. No consumer who has already received notice will be prejudiced as the new proposed dates would provide each consumer additional time in which to submit and perfect their claims.

<b><u>Event</u></b>	<b><u>Original Date</u></b>	<b><u>Revised Date</u></b>
Filing of Materials in Support of Final Approval	November 10, 2008	March 2, 2009
Filing of Request for Exclusion (Consumers Only)	Postmarked by December 1, 2008	Postmarked by March 16, 2009 (date related to Consumers only)
Notice of Intention to Appear at Fairness Hearing Filed (Consumers Only)	December 1, 2008	March 16, 2009 (date related to Consumers only)
Filing and Service of Appearance of Counsel at Fairness Hearing (Consumers Only)	December 9, 2008	Postmarked March 8, 2009 (date related to Consumers only)
Continued Final Approval Hearing	December 16, 2008 <sup>2</sup>	April 1, 2009 or later  (to be determined by the Court)
Filing of Claim (Consumers Only)	Postmarked January 31, 2009	Postmarked May 1, 2009 (Consumers Only)

<sup>2</sup> All TPP matters can be resolved at the current hearing set for December 16, 2008. Plaintiffs ask that the Court address TPPs matters on that date and continue the hearing to finalize matters relating to consumers.

For the reasons set forth above, Class Plaintiffs respectfully request that the Court enter the attached [Proposed] Order Resetting Certain Dates Related to Consumer Claims in the Track Two Settlement as well as the Date for a continued Fairness Hearing related to consumers.

DATED: November 21, 2008

By /s/ Steve W. Berman  
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**CO-LEAD COUNSEL FOR  
PLAINTIFFS**



**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **CLASS PLAINTIFFS' REPORT TO THE COURT REGARDING NOTICE IN THE TRACK TWO SETTLEMENT AND MOTION TO RESET CERTAIN DATES RELATED TO CONSUMER CLAIMS**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on November 21, 2008, a copy to LexisNexis File & Serve for posting and notification to all parties.

**/s/ Steve W. Berman**

Steve W. Berman

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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**[PROPOSED] ORDER REVISING CERTAIN TRACK TWO SETTLEMENT DATES**

WHEREAS, this matter has come before the Court pursuant to Plaintiffs’ request to reset certain dates relating to the Track Two Class Settlements to allow for additional direct notice to consumer class members;

IT IS HEREBY ORDERED THAT:

This Court’s July 2008 Order Granting Preliminary Approval of the Track Two Class Settlement, Directing Notice to the Classes, and Scheduling Fairness Hearing (“Preliminary Approval Order”) [Docket No. 5426] is hereby modified as follows:

<b><u>Events</u></b>	<b><u>Original Date</u></b>	<b><u>Revised Date</u></b>
Filing of Materials in Support of Final Approval	November 10, 2008	March 2, 2009
Filing of Request for Exclusion (Consumers Only)	Postmarked by December 1, 2008	Postmarked by March 16, 2009 (date related to Consumers only)
Notice of Intention to Appear at Fairness Hearing Filed (Consumers Only)	December 1, 2008	March 16, 2009 (date related to Consumers only)

Filing and Service of Appearance of Counsel at Fairness Hearing (Consumers Only)	December 9, 2008	Postmarked March 8, 2009 (date related to Consumers only)
Continued Final Approval Hearing	December 16, 2008 <sup>1</sup>	April 1, 2009 or later  (to be determined by the Court)
Filing of Claim (Consumers Only)	Postmarked January 31, 2009	Postmarked May 1, 2009 (Consumers Only)

Plaintiffs shall advise Consumer class members of the revised schedule (Class 1 and Consumers in Class 3). This schedule does not impact Third Party Payor (TPP) class members (Class 2 and Third Party Payors in Class 3). All other dates set forth in the Court's previous rulings will remain unchanged, including the following:

TPP Claim Deadline	12/1/2008
TPP Opt Out/Objection Deadline	12/1/2008
TPP Notice of Intention to Appear at Fairness Hearing	12/1/2008
Responses to Objections Filed on 12/1	12/8/2008
TPP Filing/Service of Appearance of Counsel at Fairness Hearing	12/9/2008
Hearing on TPP matters	12/16/2008 2 pm.

Date: \_\_\_\_\_

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Patti B. Saris  
United States District Judge

<sup>1</sup> All TPP matters can be resolved at the current hearing set for December 16, 2008. Plaintiffs ask that the Court address TPPs matters on that date and continue the hearing to finalize matters relating to consumers.